

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

KEITH A. CODAY.

Appellant

---

DOCKET NUMBER WD77619

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: April 19, 2016

---

Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Charles H. McKenzie, Judge

---

Appellate Judges:

Division Three  
James Edward Welsh, P.J., Alok Ahuja, C.J., and Thomas H. Newton, J.

---

Attorneys:

Laura Martin, Kansas City, MO

Counsel for Appellant

---

Attorneys:

Richard Starnes, Jefferson, City, MO

Counsel for Respondent

---

**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.  
KEITH A. CODAY, Appellant**

**WD77619**

**Jackson County**

Before Division Three Judges: Welsh, P.J. Ahuja, C.J., and Newton, J.

Keith A. Coday appeals the circuit court's judgment sentencing him as a persistent offender after the court found him guilty of driving while intoxicated following a bench trial. In his only issue on appeal, Coday contends that the evidence was insufficient to support the circuit court's finding that he was a persistent DWI offender. In particular, he claims that State failed to produce sufficient evidence to allow the circuit court to find beyond a reasonable doubt that the acts underlying Coday's two Kansas convictions were acts specifically prohibited under Missouri's driving while intoxicated statute, section 577.010, RSMo Cum. Supp. 2013.

**Reversed and remanded**

**Division Three holds:**

It was the State's burden to prove, beyond a reasonable doubt, that Coday had two prior intoxication-related traffic offenses. The record established that Coday pled guilty to two offenses of "driving while under influence of alcohol and/or drugs" in violation of Kan. Stat. Ann. § 8-1567, but there was nothing in the record establishing that Coday was operating a vehicle during the commission of the offense. Thus, there was nothing in the record from which the circuit court could have determined that the acts committed by Coday during the course of the Kansas offenses were sufficient to establish that Coday was operating a vehicle while under the influence of alcohol or drugs. Therefore, the circuit court erred in finding Coday guilty of the class D felony of driving while intoxicated and sentencing Coday as a persistent offender to four years' imprisonment. We reverse the circuit court's judgment and remand for sentencing for the class B misdemeanor offense of driving while intoxicated.

Opinion by James Edward Welsh, Presiding Judge

April 19, 2016

\* \* \* \* \*

<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
--